



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 0529, RELATING TO RESIDENTIAL REAL PROPERTY.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, March 2, 2021

TIME: 12:00 p.m.

LOCATION: State Capitol, Room 308, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Wade H. Hargrove III,
Deputy Attorney General, at 587-3050)

Chair Luke and Members of the Committee:

The Department of the Attorney General provides the following comments on this measure.

This measure provides authority for the police or county planning and permitting agencies to: (1) access private property to conduct an investigation where certain conditions exist, (2) take enforcement action as appropriate if those conditions are found, and (3) request that the Department of Health assist in the evaluation of any health-related condition. These actions would be authorized “for the purpose of investigating any condition that the officer reasonably believes” may pose an “imminent threat of illness, disease, or injury, or imminent threat to health or safety” as provided on page 3, lines 3-7, as well as for the violation of any county zoning ordinance, rule, or regulation that is adopted in accordance with section 46-4, Hawaii Revised Statutes (HRS), involving residentially zoned real property as provided on page 3, lines 8-12. Notably, the access authorized by this measure would not require a warrant. Further, it defines an “imminent threat of illness, disease, or injury, or imminent threat to health or safety” as including: (1) “[a]n unreasonable amount of accumulated trash”; (2) “[o]ne or more dilapidated structures that may attract or house insects, vermin, or other pests”; (3) [o]ccupation by one or more unauthorized persons when the property is not in a habitable condition or is not equipped with proper sanitary facilities”; and (4) “[a]ny

nuisance described in section 322-1," HRS. This measure, on page 4, lines 4-9, also provides that a person who fails to remedy any condition on the property that gives rise to a notice of violation issued pursuant to the authority provided in this measure "shall be assessed by the agency a fine of not less than \$5,000 for each day the violation persists." There is, however, no provision setting forth a maximum fine.

This bill would allow police to conduct searches of private property without the prior consent of the owner or resident and without a search warrant. Such searches would likely be challenged on constitutional grounds relating to the Fourth Amendment's protections against unreasonable search and seizure. The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

A judicially recognized exception to the requirement that authorities first obtain either a warrant or permission to enter private property is the presence of exigent circumstances. The Hawaii Supreme Court has defined an exigent circumstance justifying a warrantless search as limited to a situation where "immediate police response is required to prevent imminent danger to life or serious damage to property, or to forestall the likely escape of a suspect or the threatened removal or destruction of evidence." State v. Teixeira, 62 Haw. 44, 50 (1980).

The protections provided by the Fourth Amendment are best expressed as those which are necessary to "safeguard the privacy and security of individuals against arbitrary invasions by government officials." Camara v. Municipal Court of City and County of San Francisco, 387 U.S. 523, 528 (1967). The United States Supreme Court has recognized that where a government agency wishes to inspect a private residence for violations of local housing codes, and that effort is made without first securing a search warrant, such search is unreasonable under the Fourth Amendment. Id. at 533. This is true notwithstanding the fact that the search was related generally to the need to

protect the public welfare and safety. Id. The U.S. Supreme Court statement in Camara is instructive here. The Court stated that, “It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement. Thus, we do not find the public need argument dispositive.” Id. Where an inspection is of a private dwelling and the inspection is designed to identify defects with respect to the condition of the property, refusal by the owner or occupant and the type of building may of course support a finding of probable cause justifying the issuance of a warrant. Id. at 538-540. Nevertheless, a warrant is required absent exigent circumstances, even though the inspection may concern matters pertaining to, and the protection of, public health and safety in general. Id. at 540.

Based on the foregoing we recommend that proposed section 46-__ (a)(2) on page 3, lines 8-12, and proposed section 46-__ (d) on page 5, lines 1-10, in section 2 of the bill be deleted in their entirety. With these provisions removed, the measure simply codifies in statute what has been recognized by the courts--that inspections performed by a government official acting in good faith may proceed without a warrant and without permission when there is reason to believe an imminent threat to public health and safety may be averted. Additionally we recommend establishing a maximum penalty so that there is clear legislative authority for the imposition of a penalty within a certain range by the implementing agency. This can be accomplished by adding wording to page 4, line 8, so that it reads “a fine of not less than \$5,000 and not more than \$_____ for each day the violation persists.”

We appreciate the opportunity to comment on this measure.



/AIKIKI NEIGHBORHOOD BOARD NO. 9

/o NEIGHBORHOOD COMMISSION • 925 DILLINGHAM BLVD. SUITE 160 • HONOLULU, HAWAII, 96817
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The Waikiki Neighborhood Board supports the concept of the following bill: HB529

At the February 9, 2021 Regular Meeting of the Waikiki Neighborhood Board the Board voted in favor of the concept of this bill.

While some aspects of this bill may touch on homeowner's rights the cases of a simple home visit can prevent major disastrous events, crimes and safety violations that impact or threaten neighbors. Very specific conditions must be attached to this bill to protect the rights of our citizens.

Robert J. Finley
Robert J. Finley
Chair



POLICE DEPARTMENT

COUNTY OF MAUI



MICHAEL P. VICTORINO
MAYOR

55 MAHALANI STREET
WAILUKU, HAWAII 96793
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TIVOLI S. FAAUMU
CHIEF OF POLICE

OUR REFERENCE
YOUR REFERENCE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

March 1, 2021

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
Committee on Finance
31st State Legislature 2021
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: HOUSE BILL 529 RELATING TO RESIDENTIAL REAL PROPERTY

Dear Chair Luke and Committee Members:


The Maui Police Department SUPPORTS the passage of HB 529, which authorizes law enforcement and government agencies to shut down nuisance properties.

Our officers expend a lot of resources addressing issues related to abandoned properties occupied by vagrants and squatters. The issues include illegal activities such as drug use and sales, thefts from neighbors, threatening and disorderly behavior, and health hazards such as accumulating garbage and derelict vehicles.

We have continued to respond to 911 calls as well as execute search warrants on these “trap” houses and have made many arrests, only to have the offenders released while moving through the judicial system. In response to complaints from neighboring property owners and concerned citizens, many state and county agencies have attempted to resolve this issue, to include Child Welfare Services, Probation/Parole, Prosecutors, Attorney General’s office, State Department of Health, and the Fire Department, to no avail. Efforts to pursue foreclosure and eviction proceedings are met with delays and denials, partly due to unresponsive property owners.

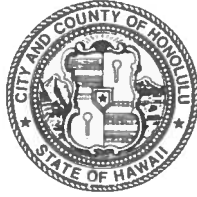
This act will give law enforcement and government agencies the ability to pursue another legal avenue to better the quality of life for the affected communities. The Maui Police Department strongly urges the passage of HB 529. Thank you very much for the opportunity to testify.

Sincerely,


TIVOLI S. FAAUMU
Chief of Police

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE **JH-AS**

March 2, 2021

The Honorable Sylvia Luke, Chair
and Members
Committee on Finance
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 308
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

Subject: House Bill No. 529, Relating to Residential Real Property

I am Jarod Y. Hiramoto, Captain of the Major Events Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of House Bill No. 529, Relating to Residential Real Property.

This bill places the enforcement responsibility on county planning and permitting agencies as well as county police departments to investigate situations when real property owners fail to maintain premises in a safe and sanitary condition. Responsible agencies along with police department personnel are granted the authority to enter privately owned property without the consent of the owner.

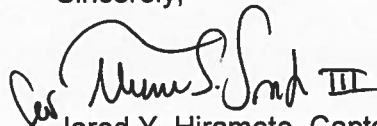
The Fourth Amendment to the U.S. Constitution protects personal privacy, and every citizen's right to be free from unreasonable government intrusion into their persons, homes, businesses, and property -- whether through police stops of citizens on the street, arrests, or searches of homes and businesses. A State law providing authority to enter private property does not supersede an individual's 4th Amendment rights. An imminent threat of illness, disease, injury, health or safety does not meet the standard of exigent circumstances.

Beyond constitutional concerns, there would be financial impacts to the police departments with added training and increased enforcement action. Police department personnel will require training as to what constitutes an illness or disease. In addition, police departments would require training in zoning ordinance, rules, and regulations.


The Honorable Sylvia Luke, Chair
and Members
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Once again, the HPD stands opposed to House Bill No. 529, Relating to Residential Real Property. Thank you for the opportunity to testify on this bill.

Sincerely,


Jarod Y. Hiramoto, Captain
Major Events Division

APPROVED:


Susan Ballard
Chief of Police

HB-529

Submitted on: 2/27/2021 3:26:55 PM

Testimony for FIN on 3/2/2021 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Comments	No

Comments:

Comments:

Who determines "imminent threat to health, safety,"? This law seems to have been written for a very specific neighborhood, area of Kailua. It is greatly concerning that some folks are ok with law enforcement entering a home in this manner. At first glance, this bill does not seem equitable across our islands. PERHAPS, it should be reconsidered as a State law.?